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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF NEVADA**

14 JOHN SCOTT BURRIS,

15 Plaintiff,

16 vs.

17 FIRST RELIANCE STANDARD LIFE
18 INSURANCE COMPANY,

19 Defendant.

Case No.: 2:20-CV-00999-APG-BNW

**[PROPOSED] DISCOVERY PLAN AND
SCHEDULING ORDER**

(Special Scheduling Review Requested)

20 Plaintiff John Scott Burris and defendant First Reliance Standard Life Insurance
21 Company jointly request special scheduling review and submit the following discovery plan and
22 scheduling order for this case.

23 **I. Rule 26(f) Conference.**

24 In accordance with Fed. R. Civ. P. 26(f), conferences were held on September 23, 2020
25 and thereafter between Patrick R. Leverty and Rueben H. Cawley, counsel for Burris, and Ann-
26 Martha Andrews, counsel for Reliance Standard. The parties agree that the standard discovery
27 plan is not best suited for this case, which is governed by the Employee Retirement Income
28 Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., for the reasons set forth in more detail
below.

1 **II. Nature of the Case and Purpose of Special Review.**

2 This lawsuit arises out of Burris's claim for long-term disability benefits under a plan
3 established and maintained by his employer, Wilson Elser, and funded via a policy of group
4 long-term disability insurance issued by Reliance Standard. Burris's Complaint alleges a claim
5 for benefits under ERISA.

6 ***Plaintiff's view.*** Currently, Plaintiff is seeking to amend the Complaint in part to ensure
7 that the claims and defenses raised in the administrative record ("AR") below are litigated in this
8 action for Plaintiff's long-term disability benefits arising out of Plaintiff's doctor's final
9 diagnosis of disability May and June 2019. Plaintiff was ultimately diagnosed with Chronic
10 Fatigue Syndrome, as supported in part by a positive test for reactivated Epstein Barr Virus.
11 Plaintiff's doctor began with a preliminary diagnosis of "depression" as Plaintiff's disability,
12 which the doctor eliminated, along with other possible diagnoses, over a period of 6 months
13 (December 2018 to May 2019).

14 The parties dispute whether Defendant properly preserved and produced material
15 evidence that should be part of the administrative record for this case, as alleged in the
16 Complaint. Additionally, Plaintiff seeks to prove that Defendant has a structural conflict of
17 interest. Plaintiff also seeks to prove that that Defendant did not follow the Plan documents nor
18 ERISA requirements and acted far outside of the boundaries for conferring discretion. Plaintiff
19 also seeks to prove that several other factors exist to show that a de novo (or a heightened)
20 standard of review of the administrative record is proper.

21 The parties dispute the applicable standard of review.

22 ***Defendant's View.*** The Court will decide the merits of the case based only upon the
23 administrative record (the claim file). The operative plan documents confer discretion on the
24 claim administrator, Reliance Standard, such that the Court will apply the abuse of discretion
25 standard in deciding the merits of the case. While some discovery into the dual-role conflict may
26 be appropriate, the discovery must be narrowly-tailored to the facts of the specific case.

27 **III. Proposed Plan.**

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- A. **Disclosure of the Administrative Record:** October 23, 2020
- B. **Amendment of Pleadings and Addition of Parties:** December 4, 2020
- C. **Deadline to Complete Discovery:** February 1, 2021
- D. **File the Administrative Record:** January 8, 2021
- E. **Plaintiff's Opening Brief:** February 1, 2021
- F. **Defendant's Response Brief:** March 1, 2021
- G. **Plaintiff's Optional Reply Brief:** March 15, 2021

IV. Electronically Stored Information.

The parties do not anticipate any issues relating to the disclosure, discovery, or preservation of ESI at this time. If issues arise, the parties will meet and confer and present a plan to the Court.

V. Privilege Issues.

The parties do not currently propose any agreement relating to claims of privilege. In the event that discovery is conducted and claims of privilege or protection are made, the parties will work together to present a stipulated confidentiality order to the Court.

Plaintiff's View. Plaintiff has respectfully requested that information that is private or may be embarrassing if made public be redacted in the public facing documents.

VI. LR 26-1 Certifications.

In accordance with LR 26-1(b)(7), the parties certify that they have met and conferred regarding the possibility of using alternate dispute-resolution processes and have agreed to schedule a private mediation at an appropriate time.

In accordance with LR 26-1(b)(8), the parties certify that they have met and conferred about alternate forms of case disposition including consent to trial by a magistrate judge and the use of the Short Trial Program.

The provisions of LR 26-(b)(9) do not apply as no jury trial has been demanded and none is permitted in this ERISA matter.

1 RESPECTFULLY SUBMITTED this 7th day of October 2020.

2 LAW OFFICES OF
3 REUBEN H. CAWLEY.

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

4 By: s/ Reuben H. Cawley (w/ permission)

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*Attorneys for Defendant First Reliance
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15 IT IS SO ORDERED

16 DATED: 3:50 pm, October 09, 2020

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18 BRENDA WEKSLER
19 UNITED STATES MAGISTRATE JUDGE
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